

APPLICANT:
Lismore Limited Liability Company

BEFORE THE
ZONING HEARING EXAMINER

REQUEST: Rezone .326 acres from
CI/VR to CI

FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: December 6, 2006

Rezoning Case No. 120

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Lismore Limited Liability Co.

LOCATION: 1 Newport Drive, Forest Hill, Maryland 21050
Tax Map: 33/40 Grid: 1D / Parcel: 348 / Deed 2256/166
Third (3rd) Election District

ZONING: CI / Commercial Industrial and VR / Village Residential

REQUEST: Rezoning, pursuant to Section 267-12A of the Harford County Code, to
rezone 0.326 acres from a CI/VR District to CI District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant testified James Lambdin, owner and manager of Lismore Limited Liability Company, which Mr. Lambdin identified as a Maryland limited liability company. The Applicant is the owner of Lot 1 in the Forest Hill Business Center.

Mr. Lambdin stated that the subject property, which overall consists of about 2 acres, was purchased in August 1994 and transferred to the Applicant's name in May 1995.

The property for which the Applicant seeks rezoning is part of what is known as Lot 1 in the Forest Hill Business Center, located at the corner of Maryland Routes 23 and 24. Lot 1 is improved by a freestanding brick building of about 12,000 square feet, and a freestanding, smaller, commercial building now used as a bank branch. Mr. Lambdin explained that during the 2005 Comprehensive Rezoning the Harford County Department of Planning and Zoning had recommended a rezoning of the subject parcel to the zone which is now being requested, even though the Applicant had not formally requested such a change. Mr. Lambdin explained that the Harford County Council also approved such a rezoning during the 2005 Comprehensive Rezoning process. Of course, that comprehensive rezoning legislation was then vetoed by County Executive Craig.

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Mr. Lambdin described, with the assistance of Petitioner's Exhibits 9A and B, proposed additional improvements to the subject property which would consist of an approximately 8,600 square foot freestanding, office building located northwest of the existing one-story freestanding commercial building. That building would encompass part of the 0.326 acre parcel for which rezoning is requested and could not be built without the requested rezoning.

Mr. Lambdin explained that his company has notified all property owners within 500 feet of the subject property of the requested rezoning. No objection has been received from any neighbor.

Next for the Applicant testified Arthur Leonard, a land development consultant and registered professional engineer. Mr. Leonard was offered and accepted as an expert in planning and zoning matters. Mr. Leonard explained that of the total acreage of Lot 1, approximately 1.791 acres is zoned CI/Commercial Industrial, and approximately 0.326 acres is zoned VR/Village Residential. It is this 0.326 acre portion for which rezoning is sought.

The property to the east of Lot 1 is zoned CI; to the north of Lot 1 is zoned VR; to the south of Lot 1 is zoned B2; and to the west, across Maryland Route 24, is zoned RR. Mr. Leonard explained there also exists a narrow strip of VR property on the west side of Maryland Route 24.

All of Lot 1, including the part of the property which is the subject of this zoning request, is designated a high intensity on the Harford County Master Land Use Plan. Village Residential zoning is not consistent, in Mr. Leonard's opinion, with the high intensity zoning classification of the property under the Master Land Use Plan.

Mr. Leonard has reviewed the zoning history of the property. In 1981 an agreement was executed between the then owners of the subject property and certain neighbors. That agreement, contained in the file, established boundaries between the then proposed GI zoning of the subject property and adjoining agricultural and residentially used parcels. In 1982 Lot 1 was subsequently zoned a combination of CI and VR. This zoning was separated by the zoning line which is in existence today between the CI and VR zoning on the subject property.

The property – Lot 1 – maintained its split VR-CI zoning through the 1989 and 1997 comprehensive zoning.

Mr. Leonard stated that the 1981 agreement between the then owners and the neighbors contained a sketch which graphically showed the division line between the then MI zoning and VR zoning. This line of division continues to the present day. Furthermore, Mr. Leonard identified for the record a 1997 letter (Petitioner's Exhibit 15B) which set forth the Department of Planning and Zoning's position that the 1981 agreement established the zoning line through Lot 1, and that the County was maintaining that zoning in reliance upon the agreement. Mr. Leonard accordingly concluded that the present line of demarcation between the CI and VR zoning was established by, and is intended to conform to, the September 18, 1981 agreement (See Petitioner's Exhibit 13).

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Mr. Leonard reviewed and discussed the September 18, 1981 agreement. The area which the agreement anticipated to be zoned and maintained as a residential or agriculturally used area was described as the “reserved area”. Mr. Leonard compared the sketch line attached to the September 18, 1981 agreement with the actual dividing line between the two zones on the subject property. Mr. Leonard determined that the County map zoning line is, actually, approximately 100 feet to the east of the line as designated on the sketch attached to the September 18, 1981 agreement. Because the line is mislocated approximately 100 feet to the east, the line as extended southward bisects Lot 1. According to Mr. Leonard’s calculations, it was anticipated that the line would terminate roughly on the northern side of Newport Drive and not impact what is now known as Lot 1 at all. According to Mr. Leonard, the zoning line as shown on the Comprehensive Zoning Maps is incorrect; it should be 100 feet west. If relocated 100 feet to the west the subject property would not be bisected by this line of agreement, and would not have been split zoned. Lot 1 would be zoned CI in its entirety. In support of his findings, Mr. Leonard referred to language in the agreement of September 19, 1981 which discusses the reserved area being north of the entrance road, which is know as Newport Drive.

Mr. Leonard also believes that extending the VR zone to the south of Newport Drive in actuality creates a small island which is not protective of any element of the neighborhood, and would not have logically been intended by the parties to the agreement.

Mr. Leonard also stated that because of the small size of the existing VR zoned property on Lot 1, the Applicant is deprived of any use. Accordingly, to maintain a VR portion of Lot 1 is not sound planning, does not enhance the public welfare, is not protective of surrounding properties. Furthermore, as earlier stated, the continuation of the VR zone is not in conformance with the Harford County Master Land Use Plan.

Mr. Leonard also believes that change in the zoning of the property, as requested, will not violate any of the Limitations, Guides and Standards of the Harford County Code, Section 267-9I.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the subject property is shown as high intensity on the Harford County Master Land Use Plan. The Department believes there has been no change in the neighborhood since the 1997 Comprehensive Zoning. However, Mr. McClune and the Department believe that a mistake occurred in maintaining the property’s VR zoning. Mr. McClune believes that Mr. Leonard is accurate in his testimony that the original zoning law was intended to follow the line as set forth in the agreement of September 18, 1981. However, the line clearly is shown farther to the east, and extends farther below Newport Drive, than was anticipated in the agreement. In Mr. McClune’s opinion the agreement refers to and affects only the property north of the entrance road, not south. The subject property is located south of the entrance road. Accordingly, the property was split-zoned in error, and the subject parcel should have been given CI zoning.

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Mr. McClune and the Department also believe that split zoning on Lot 1 serves no purpose, and that CI zoning is consistent with the Harford County Master Land Use Plan.

Mr. McClune noted that both the Planning Advisory Board and the Historic Preservation Commission have voted to approve the requested zoning change.

No testimony or evidence was given in opposition.

APPLICABLE LAW:

Section 267-12 A. Zoning Reclassifications States:

“A. Application initiated by property owner.

(1) Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:

(a) The location and size of the property.

(b) A title reference or a description by metes and bounds, courses and distance.

(c) The present zoning classification and the classification proposed by the applicant.

(d) The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(e) A statement of the grounds for the application, including:

[1] A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation.

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[2] *A statement as to whether there is an allegation of substantial change in the character of the neighborhood and, if so, a precise description of such alleged substantial change.*

(f) *A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion."*

The Applicant requests a change in the zoning of the property. In determining whether any such request should be granted;

"It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action." See Wakefield v. Kraft, 202 Md. 136 (1953).

It is a "rudimentary" principle of zoning review that there exists a:

"... strong presumption of correctness of the original zoning and of comprehensive rezoning to sustain a piecemeal change. Strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced."

See Stratakis v. Beauchamp, 268 Md. 643 (1973).

See also Hardesty v. Dumphy, 259 Md. 718 (1970).

Furthermore, legally sufficient evidence must exist to show "substantial change" in the character of the neighborhood, and not a "mere change" which may very well fail to rise to the level of legally sufficient evidence to justify a finding of change in the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989).

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant presents a compelling case of mistake in zoning in support of its request to rezone a 0.326 acre parcel from its present Village Residential zoning to Commercial Industrial. The property itself is located roughly at the intersection of Maryland Route 24 and Route 23 and is part of the Forest Hill Business Center, lying directly south of the Newport Drive entrance.

The subject property itself is vacant, although the remaining portion of Lot 1, which consists of about 1.65 acres, is improved by two substantial sized buildings.

Convincing testimony was also presented that the property itself, with Village Residential zoning, cannot be developed for any practical use by the Applicant. Typical Village Residential uses are not in keeping with the surrounding Forest Hill Business Center uses, and are not consistent with the Harford County Master Land Use Plan.

Arthur Leonard, for the Applicant, described the unusual set of circumstances which led to Lot 1 being given its split-zoning between VR and CI. According to Mr. Leonard the original agreement between the then owners of the Forest Hill Business Center and certain of the neighbors, which was executed in 1981, was clearly an intent to segregate the more intensive commercial activity of the Forest Hill Business Center from existing agricultural and residential uses along Maryland Route 24. A line of division was set forth in the agreement. Subsequent zoning of the parcel was based upon that line of division as testified to by Anthony McClune and as is well documented by letters in the file. However, when comparing the line of agreement with the actual zoning maps, Mr. Leonard determined that the line is being inaccurately followed on the zoning maps. The line of division should be some 100 feet farther to the west. If that is so, then the line would not extend through Lot 1, and Lot 1 should not, therefore, have been impacted by the agreement. Mr. Leonard cites, in support for his conclusion, language in the agreement itself which indicates that the line of division should not extend below Newport Drive. Of course, the subject property lies wholly below Newport Drive.

Mr. Leonard's findings are support by the Department of Planning and Zoning which, in its independent review, has come to the same conclusion that a mistake was made in giving the property split zoning as a result of misapplication of the 1981 agreement.

Both Mr. Leonard and Mr. McClune further agree that the most appropriate zoning for the entire site is CI which, of course, was the zoning given to the remaining 80% of Lot 1. It is also significant, and it is so found, that CI zoning is consistent with the Harford County Master Land Use Plan, whereas VR is not.

Accordingly, it is found that a mistake was made in zoning the subject property VR. The most appropriate zone is CI.

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Nevertheless, the analysis does not end here. The Harford County Code requires a review of the request in light of the standards of § 267-9I, Limitations, Guides and Standards. That section is discussed as follows:

- (1) *The number of persons living or working in the immediate area.*

The rezoning of the subject property will allow the Applicant to construct an approximately 8,600 square foot freestanding office building which will be similar in size and function to other buildings in the immediate area and located on the remaining part of Lot 1. Such a building will be consistent with those uses, will be consistent with the neighborhood, and should not cause any significant impact on the number of persons living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

There is no evidence that the rezoning of the property would adversely impact existing traffic conditions. The subject property is located directly at the intersection of Newport Drive and Maryland Route 24. This relatively direct ingress and egress onto Maryland Route 24 should allow the property to be used, as proposed, with no or very limited impact on traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There should be no adverse impact on the orderly growth of the neighborhood and community. Any fiscal impact should be positive given the commercial nature of the proposed use.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There should be no adverse impact from any of these effects if, indeed, any such effect is generated.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The property is serviced by public water and sewer and fire and police protection is more than adequate.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

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It is found that the rezoning is consistent with generally accepted engineering and planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified. While there are such structures in the neighborhood, it is found there will be no adverse impact on those structures. The proposed use of the site is similar to adjoining uses.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The property is consistent with the Harford County Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

It is found there will be no adverse environmental impact.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

CONCLUSION:

Accordingly, it is recommended that the proposed rezoning of the subject parcel from VR to CI be approved.

Date: January 9, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 7, 2007.